

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FEB - 6 2003

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

PACIFIC AEROSPACE & ELECTRONICS,
INC.,

Plaintiff,

v.

EDWARD TAYLOR, et al.,

Defendant.

No. CS-02-412-FVS

ORDER DISMISSING THE
DEFENDANTS' MOTION FOR
RECONSIDERATION AND MOTION
TO DISMISS

THIS MATTER is before the Court on the defendants' Motion for Reconsideration, Ct. Rec. 16, and Motion to Dismiss or in the Alternative to Limit Discovery to Issue of Federal Court Jurisdiction, Ct. Rec. 18.

BACKGROUND

On December 9, 2002, the defendants filed the Motion for Reconsideration, Ct. Rec. 16, of this Court's ex parte order granting the plaintiff's Motion for Expedited Discovery. That same day, the defendants filed the Motion to Dismiss or in the Alternative to Limit Discovery to Issue of Federal Court Jurisdiction, Ct. Rec. 18. The defendants filed an affidavit, Ct. Rec. 17, in support of the Motion for Reconsideration. However, the defendants never filed a memorandum of points and authorities in support of either motion. The defendants also never filed a notice setting the time, date and

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MOTION TO DISMISS - 1

1 place for a hearing on either motion. The plaintiff filed a response
2 to the defendants' motions on December 12, 2002.

3 On January 13, 2003, the defendants filed answers to the
4 plaintiff's complaint through defense counsel, David Sonn. Ct. Recs.
5 23 & 24. On January 24, 2003, Mr. Sonn withdrew and was replaced by
6 Janyce Lynn Fink as counsel for the defendants. The defendants still
7 have not noted or filed legal memoranda in support of their motions
8 for Reconsideration and to Dismiss.

9 DISCUSSION

10 The Court's Local Rules (LR) require parties filing motions to
11 serve and file "a memorandum setting forth the points and authorities
12 relied upon in support of the motion", LR 7.1(b), and to "file a
13 notice setting the time, date and place for a hearing on a motion",
14 LR 7.1(h)(1). The Rules provide that "[a] failure to timely file a
15 memorandum of points and authorities in support of or in opposition
16 to any motion may be considered by the Court as consent on the part
17 of the party failing to file such memorandum to the entry of an order
18 adverse to the party in default." LR 7.1(h)(5). In addition, LR
19 7.1(b) provides that "[a] failure to file a Notice of Hearing with a
20 motion shall likewise be construed to be consent to the entry of an
21 adverse order."

22 Therefore, because the Court finds that the defendants have not
23 timely filed a memorandum or points and authorities in support of
24 their Motion for Reconsideration, Ct. Rec. 16, or their Motion to
25 Dismiss, Ct. Rec. 18, the Court determines that these motions should
26 be dismissed pursuant to LR 7.1(h)(5). Furthermore, another

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1 appropriate basis for dismissing the Motion for Reconsideration and
2 Motion to Dismiss is the failure to file a Note of Hearing. See LR
3 7.1(b).


4 **IT IS HEREBY ORDERED** that:

5 1. The defendants' Motion for Reconsideration, Ct. Rec. 16, is
6 **DISMISSED WITHOUT PREJUDICE**. The Court expressly grants
7 the defendants leave to renew the Motion for
8 Reconsideration when appropriate.

9 2. The defendants' Motion to Dismiss or in the Alternative to
10 Limit Discovery to Issue of Federal Court Jurisdiction, Ct.
11 Rec. 18, is **DISMISSED WITHOUT PREJUDICE**. The Court
12 expressly grants the defendants leave to renew the Motion
13 to Dismiss or in the Alternative to Limit Discovery to
14 Issue of Federal Court Jurisdiction when appropriate.

15 **IT IS SO ORDERED.** The District Court Executive is hereby
16 directed to enter this order and furnish copies to counsel.

17 **DATED** this 6th day of February, 2003.

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19 Fred Van Sickle
20 Chief United States District Judge
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